plea of res judicata, or the more general plea of estoppel, to any transaction such as the present, which is in plain defiance of statutory injunction. Such a plea, if allowed, would place the Courts of the country in open conflict with the determination of the Legislature.

I turn finally to the defendants' third plea, namely, that the facts gave rise to an implied new agreement 'whereunder the completion' of agreement II, 'was extended beyond 31 December 1983 and until the plaintiffs had given a notice to the defendants to complete the said agreement within a reasonable time. In the event, no such notice was given by the plaintiffs to the defendants'.

I am unable to agree that the evidence merits such implication, and I am obliged to reject this third plea.

We are left with agreement II, which the solicitor acting for both parties drew up in order to ensure that the transaction was governed by an agreement which conformed with statute. The need for agreement II was explained to those representing the plaintiffs and defendants, and it was duly executed by them. Clause 14(2) cannot in law, for the reasons I have set out, be said to have been waived; nor are the plaintiffs estopped from setting it up.

In the event, and regrettably I regard this result to be inconsonant with the merits of the case, there will be judgment as follows:

(a) a declaration that, pursuant to the agreement between the parties dated 8 October 1980 (agreement II), liquidated damages are payable by the defendants to the plaintiffs in the sum of $184,587.86;
(b) an order that the purchase price for the property be abated by that sum of $184,587.86;
(c) consequentially, an order that the defendants do pay the plaintiffs interest on the sum of $184,587.86 at the rate of 9% pa from 18 December 1985 until judgment or payment;
(d) an order that the defendants do complete the sale and purchase of the property; do execute a transfer and restriction in favour of the plaintiffs forthwith together with a total discharge of mortgage over the property; and do make payment to the plaintiffs of the sum of $59,307.86;
(e) an order that the plaintiffs' taxed costs of the claim be paid by the defendants; and
(f) an order that the defendants' counterclaim be dismissed with costs.

Application allowed.

Solicitors: *YH Cheong*; *Allen & Gledhill.*

Reported by *Terence Tan Bian Chye*

Wong Boon Pin & Anor v Wong Boon Wah & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1208 OF 1988
CHAN SEK KEONG J
23 FEBRUARY 1989

Succession – Wills – Devise of residential property to foreign person – Legal effect of such devise – Whether devise null and void by virtue of Residential Property Act (Cap 274, 1985 Ed) – Effect of s 19 of Wills Act (Cap 352, 1985 Ed) – Trust for sale proceeds created due to compulsory sale of property under such devise – Whether such trust for sale is lawful – Residential Property Act (Cap 274, 1985 Ed), s 3 – Wills Act (Cap 352, 1985 Ed), s 19

Land Law – Devise of residential property to foreign person – Whether devise null and void by virtue of Residential Property Act (Cap 274, 1985 Ed) – Compulsory sale of such property and payment of proceeds to foreign person – Trust for sale proceeds created – Whether such trust is unlawful by virtue of s 3(1)(b) of Residential Property Act – Applicability of s 3(1)(b) – Residential Property Act (Cap 274, 1985 Ed), s 3(1)(b), (3), (4) & (10)

In this case, the testator died leaving a will in which he devised his immovable property to his wife Lee Yoke Lan, a foreigner, and the residue of his estate to trustees to hold on behalf of the beneficiaries named therein. The widow died in 1985 and the executors of the testator's estate sold the property in 1988. The applicants, representing the estate of Lee Yoke Lan, applied to the court by way of an originating summons for the court to decide whether the proceeds of the sale of the property belonged to the estate of Lee Yoke Lan or the estate of the testator. Counsel for the testator's estate contended that the devise of the property to the widow was null and void based on the following arguments. The first argument was that by virtue of s 3(3) of the Residential Property Act (Cap 274, 1985 Ed), no devise of residential property to a foreign person can take effect as a devise. As such the devise was incapable of taking effect under s 19 of the Wills Act (Cap 352, 1985 Ed) and so the property goes into the residuary devise. The second argument was that s 3(4) of the Residential Property Act, by providing for the compulsory sale of the property and the payment of the proceeds thereof to the foreign person, creates a trust for sale. Under s 3(1)(b) a trust for sale of any residential property in favour of a foreign person is unlawful.

Held, declaring that the net proceeds belonged to the estate of Lee Yoke Lan:

(1) Section 19 of the Wills Act does not lay down the conditions which make a devise unlawful or contrary to law. It merely provides for the consequences of a devise which fails or is void for any of the reasons stated therein. Accordingly, s 19 is irrelevant for the purpose of determining the legal effect of the provisions of s 3 on a devise of residential property to a foreign person.

(2) Section 3(3) of the Residential Property Act does not make it unlawful for any testator to devise residential property to a foreign person. What it does is to make it legally impossible to make such a devise by providing that no estate or interest in any residential property shall pass by bequest, succession or inheritance to any foreign person. The devise fails as a devise of real property but it does not fail altogether because s 3(4) and (10) provide that the property shall be sold and proceeds thereof be paid to the devisee.

(3) The above conclusion undermines completely the argument that such a trust for sale is unlawful by reason of s 3(1)(b). Section 3(1)(b) and (4) refer and apply to trusts for sale of residential property in favour of foreign persons created inter vivos or by testamentary disposition and this is reinforced by the qualifying words in s 3(1) 'except as provided in the Act'.

Legislation referred to
Residential Property Act (Cap 274, 1985 Ed) s 3
Wills Act (Cap 352, 1985 Ed) s 19

Lee Ban Tian for the applicants.
Andre Yeap Poh Leong for the respondents.

Cur Adv Vult

Chan Sek Keong J: One Wong Shee Fun ('the testator') died on 18 November 1979 leaving a will in which by cl 3 thereof he devised his immovable property known as No 16 King's Road, Singapore to his wife Lee Yoke Lan absolutely, and by cl 4 thereof, he bequeathed and devised the residue of his estate to trustees to hold on behalf of the beneficiaries named therein. The widow died on 10 April 1985. The executors of the estate of Wong Shee Fun have, pursuant to an order of court, sold the property on or about September 1988.

The issue before me is whether the proceeds of sale of the property belong to the estate of Lee Yoke Lan or the estate of Wong Shee Fun.

The answer to this question depends on the effect of s 3 of the Residential Property Act which provides that:

> (1) Except as provided in this Act –
> (a) no person shall, whether for consideration or by way of gift inter vivos or otherwise, transfer any residential property or any estate or interest therein to any foreign person;
> (b) no person shall create any trust for sale in respect of any residential property or any estate or interest therein in favour of any foreign person; and
> (c) no foreign person shall purchase or acquire any residential property or any estate or interest therein except by way of a mortgage, charge or reconveyance.
>
> (2) Any –
> (a) (not applicable)
> (b) trust for sale in respect of any residential property or any estate or interest therein created by any person in favour of any foreign person in contravention of subsection (1)(b); and
> (c) (not applicable)
>
> shall be null and void.
>
> (3) No estate or interest in any residential property belonging to a deceased person who dies on or after 11 September 1973 shall pass by bequest, succession or inheritance to any foreign person who is beneficially entitled under a will or under any written law governing intestate succession.
>
> (4) Where a foreign person would, but for subsection (3), be beneficially entitled to an estate or interest in residential property, the legal personal representatives to whom probate or letters of administration are granted in respect of such residential property shall, subject to subsection (5), be bound to sell such estate or interest in the residential property to a citizen or an approved purchaser within a period of 10 years of the date of the death of the deceased person and upon such sale to pay, subject to the law of wills and intestate succession, the proceeds thereof, less any expenses necessarily incurred on such sale or by reason of the administration of a deceased's estate, to or for or on behalf of the foreign person so beneficially entitled.
>
> (5) to (9) (not applicable)
>
> (10) Where the Controller has sold the residential property pursuant to subsection (6), the Controller shall pay the proceeds of the sale less any costs incurred to the legal personal representatives or the trustees of the will or estate of the deceased person for the time being and upon the acknowledgement of the receipt of such proceeds of sale by the legal personal representatives or the trustees, the Controller shall be discharged from all liability in respect of the application of the proceeds of sale; or the Controller, if he is unable to make payment of the proceeds of sale and to obtain such acknowledgement as aforesaid, may make payment into court of such proceeds of sale less all costs incurred thereby.
>
> (11) Where payment of the proceeds of sale has been made by the Controller as provided in subsection (10), every foreign person beneficially entitled under a will or by intestate succession shall be entitled to receive and shall be paid such proceeds of sale by the legal personal representatives or trustees of the will or estate of the deceased person for the time being, and in any case where the proceeds of sale have been paid into court, that foreign person shall be entitled to make application to court for payment out of court of the proceeds of sale to be made to him, and the payment of the proceeds of sale in either case shall be in accordance with the terms of the will or the law of wills or intestate succession, as the case may be.
>
> (12) to (13) (not applicable).

Section 3(4) of the Residential Property Act makes reference to the law of wills and intestate succession. Section 19 of the Wills Act (Cap 352, 1985 Ed), which counsel for the estate of Wong Shee Fun says is relevant, provides:

> 19 Unless a contrary intention appears by the will, such real estate and interest therein as is comprised or intended to be comprised in any devise in the will contained, which fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in the will.

Counsel for the estate of Wong Shee Fun has contended that the devise of the property to the widow was null and void. He advanced two arguments. The first argument is that by virtue of s 3(3), no devise of residential property to a foreign person can take effect as a devise. The devise to the widow was therefore contrary to law or otherwise incapable of taking effect *as a devise* under s 19 of the Wills Act and so the property in question goes into the residuary devise under cl 4 of his will. The second argu-

ment is that s 3(4) of the Residential Property Act (and also s 3(10), I may add), by providing for the compulsory sale of the property and the payment of the proceeds thereof to the foreign person, creates a trust for sale. Under s 3(1)(b), a trust for sale of any residential property in favour of a foreign person is unlawful. Therefore, the devise to the widow was unlawful.

In my view, neither argument is valid. Section 19 of the Wills Act does not lay down the conditions which make a devise unlawful or contrary to law. It merely provides for the consequences of a devise which fails or is void for any of the reasons stated therein. Accordingly, s 19 is irrelevant for the purpose of determining the legal effect of the provisions of s 3 on a devise of residential property to a foreign person.

Section 3(3) of the Residential Property Act does not make it unlawful for any testator to devise residential property to a foreign person. What it does is to make it legally impossible to make such a devise by providing that no estate or interest in any residential property shall pass by bequest, succession or inheritance to any foreign person. A devise of residential property to a foreign person cannot take effect as a devise. It fails as a devise of real property but it does not fail altogether because subss 4 and 10 of s 3 provide that the property shall be sold and proceeds thereof be paid to the devisee. Counsel for the estate of Wong Shee Fun is correct in submitting that a devise of a residential property to a foreign person takes effect as a trust for sale under the Residential Property Act.

This conclusion must also undermine completely the argument that such a trust for sale is unlawful by reason of s 3(1)(b). It would make no sense for the legislature to create a trust for sale merely to declare it unlawful. The argument is plainly wrong because sub-s (1)(b) and (4) of s 3 refer and therefore apply to trusts for sale of residential property in favour of foreign persons created inter vivos or by testamentary disposition. That this is the correct construction is reinforced by the qualifying words in s 3(1) of the RPA 'except as provided in the Act'. Section 3(4) is an exception, if it is necessary to rely on this qualification.

Accordingly, I declare that the net proceeds of sale of the property belong also to the estate of Lee Yoke Lan absolutely.

Order accordingly.

Solicitors: *Leong & Gay*; *Allen & Gledhill.*

Reported by *Ng Sheau Jiuan*

Prem Singh & Ors v Kirpal Singh

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 603 OF 1988
CHAO HICK TIN JC
21 FEBRUARY 1989

Mental Disorders and Treatment – Inquiry to determine whether patient is of unsound mind – Application for – Patient suffering from schizophrenia – Psychiatrists' reports differed on whether patient mentally capable of managing herself and her affairs – Discretion of court in granting inquiry – Principles of – Merits of case – Mental Disorders and Treatment Act (Cap 178, 1985 Ed), s 3(1)

This is an application by the applicants under s 3 of the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ('the Act') for an order directing an inquiry to determine whether the subject person, Mdm K ('the patient'), who is also the wife of the respondent, is or is not of unsound mind and incapable of managing herself and her affairs. The applicants are three of the children of the patient and are locked in family conflict with the respondent and five other children.

The applicants say that the respondent assaulted the patient from the sixties until the mid-seventies and because of the alleged abuse, the patient suffered mental anguish which led to schizophrenia. The patient was treated by several psychiatrists. There was divided opinion on the part of the psychiatrists as to whether the patient is mentally capable of managing herself and her affairs.

Held, disallowing the application:

(1) Section 3(1) of the Act clearly gives a discretion to the court to determine whether in a particular case where a person is alleged to be mentally disordered, an inquiry should be ordered. It does not follow that an inquiry must be ordered in every case where it is shown that the person is of unsound mind and incapable of managing herself and her affairs.

(2) In the present case, there is no allegation that there has been any physical assaults committed by the respondent on the patient since the mid-seventies. The patient is now being cared for and seems reasonably well settled with the respondent and her other children and there is no useful purpose in having an inquiry. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts and nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr N, a psychiatrist, in his report that 'it is neither necessary nor desirable to put her through an inquiry, as this may subject her to unwanted stress which may cause a flare-up in her symptoms', the court is of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

(3) The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. It ought not to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

Cases referred to

1 *Ex parte Tomlinson, Broadhurst* (1812) 1 V & B 57; 35 ER 22 (refd)
2 *Re Claire* (1846) 3 Jo & LAT 571 (refd)
3 *Re Cathcart* [1892] 1 Ch 549 (refd)